

CLAIM SUMMARY / DETERMINATION FORM

Date : 5/5/2011
Claim Number : N06040-020
Claimant : Coast Point Company, Inc. dba: Harbor Shrimp Company
Type of Claimant : Corporate (US)
Type of Claim : Loss of Profits and Earning Capacity
Claim Manager : XXXXXXXXXX
Amount Requested : \$2,106,123.50

Facts:

On June 1, 2006, two separate oil discharges occurred in the Corpus Christi Ship Channel Inner Harbor, Corpus Christi, TX a navigable water of the U.S. The first spill occurred at the Valero Refining facility and the second occurred at the Citgo Refining and Chemicals facility.

Spill #1: At 0130 hours the wastewater storage at the Valero Refining facility near dock #3 overflowed during heavy rains causing a discharge of approximately 3400 barrels of oil into the Corpus Christi Ship Channel Inner Harbor. Structural damage to the facility's piping system and the #22 wastewater tank were caused by the heavy rains and the subsequent fire from a possible lightning strike. The oil discharge increased due to a breach in the containing berm. On June 2, 2006, the Coast Guard performed an over flight of the Corpus Christi Inner Harbor Ship Channel and observed that the main concentration of oil was boomed and contained at the Valero docks.

Spill #2: Citgo Refining reported at approximately 0600 hours that a sump pump failure and outfall overflow had occurred due to overwhelming rainfall at their Corpus Christi Ship Channel facility. Approximately 14 barrels of waste water mixed with oil discharged into the Corpus Christi Ship Channel Inner Harbor. On June 2, 2006, the Coast Guard performed an over flight of the Corpus Christi Inner Harbor Ship Channel and observed that no oil was sighted outside the Ship Channel.

History of the Claim:

On October 11, 2007, Claimant, Coast Point Company, Inc. dba: Harbor Shrimp Company (Coast Point Company) and the South Texas Commercial Fisheries operate their business at 524 Bigelow Street, Conn Brown Harbor, Aransas Pass, Texas. Claimant presented a claim to the National Pollution Funds Center (NPFC) in the amount of \$2,106,123.50. Claimant alleges loss of profits and impairment of earning capacity as legal licensed members engaged in a vital Texas business, based on allowed poundage set for harvest for 2006, per licensed Bay and/or Bait Shrimp boat by the State Fishery within the Texas Parks and Wildlife Department, who according to the claimant, established poundage for harvest per licensed shrimp boat, for the period of June 1, 2006 through December 1, 2006. Claimant alleges their losses were a direct result of the oil spill incidents that occurred on June 1, 2006 and has therefore affected their business income.

On May 29, 2008, the NPFC denied the claim on the grounds that there is no evidence that the oil reached the bay, that natural resources were damaged or destroyed or that shrimp were affected by the discharge of oil. Further, Claimant failed to present all evidence necessary to support the claim, including tax records for years 2005, 2006, and 2007. After reviewing all of the information provided in support of the claim, the evidence does not demonstrate that Claimant suffered a loss caused by the oil spill incidents that occurred on June 1, 2006.¹

On July 26, 2008, Claimant requested reconsideration of the claim and an extension of time and based on a trial to be held by the Court in Nueces County, Texas. A law suit was filed by Attorney Dan Alfaro and Associates for and on behalf of other members of the Bay and Bait Shrimp Fisheries against Valero Refining-Texas, L.P. and Citgo Refining and Chemicals Company.² Claimant suggested that the trial would bring forth additional support necessary for the reconsideration.

On July 28, 2008, the NPFC placed the claim in abeyance while waiting additional information and outcome of the trial.

On April 9, 2009, the NPFC sent an email to Claimant requesting a status update. The NPFC did not receive a response.³

On April 5, 2011, the NPFC sent another status up-date with a 30-day day deadline attached.⁴

On April 26, 2011, the NPFC received an email from Claimant stating that Coast Point Company, Inc.'s claim is not involved with litigation. Claimant did not provide the requested tax documentation or any supporting documentation.⁵

NPFC's Reconsideration Claim Analysis:

Claimant requested reconsideration on July 26, 2008 and the NPFC granted the request. Claimant was expected to provide the supporting documentation to prove their claim however Claimant did not submit new information.

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136 a claimant must prove that his loss of income was due to the injury, destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all of the documentation presented by the Claimant.

Claimant provided no new information associated with its request for reconsideration other than stating that Claimant is not involved in litigation. The only argument Claimant has made on reconsideration is that it is the last seafood wholesaler still operating in Conn Brown Harbor located in the City of Aransas Pass, Texas and it has seen dramatic shrimp catch reduction in Corpus Christi Bay and Claimant firmly believes that it is due to multiple spills that have occurred. Claimant has not provided comparable financial information.

¹ See, NPFC Claim Determination dated May 29, 2008

² See, Request for reconsideration letter from Claimant to NPFC, dated July 26, 2008.

³ See, Email to Claimant dated April 9, 2009.

⁴ See, NPFC letter to Claimant dated April 5, 2011.

⁵ See, Claimant's email to NPFC dated April 26, 2011.

The NPFC denies the claim on reconsideration because the Claimant has failed to meet its burden in providing [REDACTED] alleged losses.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 5/05/11

Supervisor Action: DENIAL APPROVED

Supervisor's Comments: